



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R08-OAR-2019-0320; FRL-9999-28-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Montana; East Helena Lead Nonattainment Area Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Maintenance Plan, submitted by the State of Montana to the EPA on October 28, 2018, for the East Helena Lead (Pb) nonattainment area (East Helena NAA) and concurrently redesignating the East Helena NAA to attainment of the 1978 Pb National Ambient Air Quality Standard (NAAQS). The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: Effective **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R08-OAR-EPA-R08-OAR-2019-0320. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through , or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: James Hou, Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8ARD-QP, 1595 Wynkoop

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SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The East Helena NAA is in southern Lewis and Clark County, and is defined as a rectangle that includes both the community of East Helena and unincorporated portions of southern Lewis and Clark County. On November 6, 1991 (56 FR 56694), the East Helena area was designated as nonattainment for the 1978 Pb NAAQS (1.5 µg/m³). This designation was effective on January 6, 1992 and required the State to submit a CAA, title I, part D Pb nonattainment state implementation plan (SIP) by July 6, 1993. On August 16, 1995, July 2, 1996 and October 20, 1998 the Governor of Montana submitted SIP revisions to meet the part D SIP requirements. The control plan submitted as part of the East Helena Pb attainment plan focused on limiting emissions from the ASARCO lead smelter, which comprised the majority of lead emissions in the NAA, as well as restricting emissions from the American Chemet Copper Furnace. These emission reductions were further assisted through the complete removal of lead in gasoline by 1995.

On April 4, 2001, ASARCO shut down its lead smelter operations, thereby eliminating 99.8 percent of all stationary source Pb emissions in the NAA. The facility’s three large smelter stacks were dismantled in August 2009. On April 15, 2007, ASARCO’s Title V permit expired, and ASARCO’s Montana Air Quality Permit was revoked in September 2013. The former ASARCO site is currently a Superfund site, with institutional controls in the form of land use restrictions and soil removal ordinances in place to prevent exposure to Pb contaminated soils.

On June 18, 2001 (66 FR 32760), the EPA partially approved and partially disapproved

the State's part D SIP submittals, which satisfied the CAA's criteria for Pb nonattainment SIPs. In the June 18, 2001 action, the EPA also determined that the NAA had attained the 1978 Pb NAAQS, based on air monitoring data through the calendar year 1999. The monitoring data used to determine attainment of the NAAQS included data while the ASARCO facility was still operating.

The factual and legal background for this action is discussed in detail in our July 17, 2019 (84 FR 34102) proposed approval of the East Helena Pb Maintenance Plan and concurrent redesignation of the East Helena Pb NAA to attainment of the 1978 Pb NAAQS.

II. Response to Comments

The public comment period on the EPA's proposed rule opened on July 17, 2019, the date of its publication in the **Federal Register**, (84 FR 34102), and closed on August 16, 2019. During this time, the EPA received one comment that is not addressed because it falls outside the scope of our proposed action.

III. Final Action

The EPA is approving the East Helena Pb Maintenance Plan and is redesignating the East Helena Pb NAA from nonattainment to attainment of the 1978 Pb NAAQS.

IV. Statutory and Executive Orders Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 4, 2019.

Gregory Sopkin,
Regional Administrator,
EPA Region 8.

40 CFR parts 52 and 81 are amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart BB - Montana

2. Section 52.1370(e), under “(4) Lewis and Clark County,” is amended by adding the entry “East Helena 1978 Lead Maintenance Plan” after the entry “Total Suspended Particulate NAAQS—East Helena, East Helena Section of Chapter 5 of SIP, 4-6-79” to read as follows:

§52.1370 Identification of plan.

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(e) * * *

Title/Subject	State effective date	Notice of final rule date	NFR Citation
* * * * *			
(4) Lewis and Clark County			
* * * * *			
East Helena 1978 Lead Maintenance Plan		[Insert date of publication in the Federal Register]	[Insert Federal Register citation]
* * * * *			

3. Section 52.1375 is revised to read as follows:

§52.1375 Control strategy: Lead.

- (a) Determination—EPA has determined that the East Helena Lead nonattainment area has attained the lead national ambient air quality standards through calendar year 1999. This determination is based on air quality data currently in the AIRS database (as of the date of our determination, June 18, 2001).
- (b) Redesignation to attainment—The EPA has determined that the East Helena lead (Pb) nonattainment area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 1978 Pb NAAQS. The EPA is therefore redesignating the East Helena 1978 Pb nonattainment area to attainment.
- (c) Maintenance plan approval—The EPA is approving the maintenance plan for the East Helena nonattainment area for the 1978 Pb NAAQS submitted by the State of Montana on October 28, 2018.

PART 81 – DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

4. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

Subpart C – Section 107 Attainment Status Designations

5. In § 81.327, the table entitled “Montana – 1978 Lead NAAQS” is amended by revising the “Date” and Type” entries under “Designation” for “City of East Helena and vicinity” to read as follows:

§ 81.327 Montana.

* * * * *

Montana – 1978 Lead NAAQS

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	*	*	*
City of East Helena and vicinity	[Insert date 30 days after date of publication in the <u>Federal Register</u>]	Attainment		
* * *	*	*	*	*

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[FR Doc. 2019-19541 Filed: 9/10/2019 8:45 am; Publication Date: 9/11/2019]